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Environment and Natural Resources Division
United States Department of Justice

Attorneys for the United States

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

| | | |
|-----------------------------------|---|--------------------------------------|
| UNITED STATES OF AMERICA, |) | IN EQUITY NO. C-125-MMD |
| |) | Subproceeding: 3:73-CV-00127-MMD-WGC |
| Plaintiff, |) | |
| |) | |
| WALKER RIVER PAIUTE TRIBE, |) | MOTION TO EXTEND THE UNITED |
| |) | STATES' DEADLINES DUE TO THE |
| Plaintiff-Intervenor, |) | DEPARTMENT OF JUSTICE'S LAPSE |
| vs. |) | IN APPROPRIATION |
| |) | |
| WALKER RIVER IRRIGATION DISTRICT, |) | |
| a corporation, et al., |) | |
| |) | |
| Defendants. |) | |

1 The United States of America (United States) moves the Court to continue those actions
2 and deadlines ordered at the December 19, 2018 status hearing until after appropriations for the
3 operations of the Department of Justice have been restored. The paragraphs below describe the
4 actions that the Court asked the United States to perform by Friday, January 11, 2019 and the
5 additional time the United States will need to complete these tasks.

6 Undersigned counsel has consulted with principal parties concerning this motion and
7 counsel for the Walker River Irrigation District, the Nevada Department of Wildlife, Mineral
8 County and the Walker Lake Working Group, Mono County, Peri & Sons Farms, Inc, *et al.*, and
9 Lyon County and Centennial Livestock have all responded that they have no objection to this
10 motion.

- 12 1. On Wednesday, December 19, 2018, the Court held a status conference. *See*
13 *Proposed Agenda Items for the Status Conference Scheduled for December 19, 2018*
14 (ECF No 2418) (Agenda). At the conclusion of the status conference, the Court
15 instructed the United States to take the lead and coordinate with all principal parties
16 several activities associated with this case.
- 17 2. The Court first requested that the United States draft changes to the Court's
18 Superseding Service Order (ECF No. 2100) consistent with the comments made
19 during the status conference. *See* Agenda ¶¶ 1 and 2. The Court requested that the
20 United States coordinate with all principal parties to this case to capture and
21 incorporate all comments from all parties. The Court requested that the United States
22 submit this proposed amended service order by Friday, January 11, 2019.
- 23 3. The Court next requested that the United States draft a proposed order concerning any
24 changes that might be necessary for several orders (ECF Nos. 2407 – 2412)
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1 previously issued by this Court. *See* Agenda ¶ 3. The Court requested that the United
 2 States coordinate with all principal parties to this case to capture and incorporate all
 3 comments from all parties. The Court requested that the United States submit by
 4 Friday, January 11, 2019, either a status report concerning the progress of the parties
 5 on this matter or the proposed order developed.

6 4. Finally, the Court requested that the United States continue to work with the principal
 7 parties to finalize a scheduling order concerning the continued litigation of the water
 8 right claims of the Walker River Paiute Tribe (Tribe). *See* Agenda ¶ 4. The Court
 9 requested that the United States submit this proposed scheduling order by Friday
 10 January 11, 2019.

11 5. At the end of the day on December 22, 2018, the appropriations act that had been
 12 funding operations of the Department of Justice expired and appropriations for the
 13 Department lapsed. The same is true for most Executive agencies, including the
 14 Office of the Solicitor and the Bureau of Indian Affairs. The Department of Justice
 15 does not know when funding will be restored by Congress.

16 6. Absent appropriations, Department of Justice attorneys and employees of the
 17 Department of the Interior are prohibited from working, even on a voluntary basis,
 18 except in very limited circumstances, including “emergencies involving the safety of
 19 human life or the protection of property.” 31 U.S.C. § 1342.

20 7. The activities ordered of the United States and described in paragraphs 2 through 4
 21 above do not constitute an emergency “involving the safety of human life or the
 22 protection of property,” 31 U.S.C. § 1342, and undersigned counsel are not
 23 authorized to work during the lapse of appropriations to the Department of Justice.
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Undersigned counsel for the Department of Justice therefore requests that the Court continue the tasks of the United States listed in paragraphs 2 through 4 above until after funding for Department of Justice operations has been re-established and undersigned counsel can resume duties.

8. If this motion is granted, undersigned counsel will notify the Court when Congress resumes funding to the Department of Justice. The United States will also evaluate how quickly it can accomplish the tasks outlined in paragraphs 2 through 4. Also, depending on the duration of the lapse in appropriations, the United States will then seek commensurate extensions, if necessary, of any other deadlines that may be affected by the lapse in appropriations including, for example, the next status conference currently scheduled for Wednesday, January 30, 2019.

9. A draft of this motion was provided to other counsel of record for the principal parties to this action and at the time of filing of this motion, no objection to this motion has been received.

CONCLUSION

Although we greatly regret any disruption caused to the Court and the other litigants, for the reasons provided above the United States hereby moves the Court to continue those actions ordered at the December 19, 2018 status hearing until after appropriations for the operations of the Department of Justice have been restored.

1 Dated: January 3, 2019

Respectfully submitted,

2 ERIC GRANT

3 Deputy Assistant Attorney General

4 Andrew "Guss" Guarino, Trial Attorney

5 Tyler Eastman, Trial Attorney

6 David L. Negri, Trial Attorney

7 By /s/ Andrew "Guss" Guarino

Andrew "Guss" Guarino

8 *Attorneys for the United States of America*

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12 **CERTIFICATE OF SERVICE**

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14 It is hereby certified that on January 3, 2019 service of the foregoing was made through the court's electronic filing and notice system (CM/ECF) to all of the registered participants.

15 Further, pursuant to the *Superseding Order Regarding Service and Filing in Subproceeding C-*
16 *125-B on and by All Parties* (Doc. 2100) at 10 ¶ 20, the foregoing does not affect the rights of
17 others and does not raise significant issues of law or fact. Therefore, the United States has taken
18 no step to serve notice of this document via the postcard notice procedures described in
19 paragraph 17.c of the Superseding Order.

20 /s/ Andrew "Guss" Guarino